

**AN ORDINANCE
BY COUNCILMEMBER J. P. MATZIGKEIT**

Z-21-27

AN ORDINANCE TO AMEND THE 1982 ATLANTA ZONING ORDINANCE, AS AMENDED, TO AMEND SECTION 16-26.003, ENTITLED “CONDITIONS OF GRANTING A VARIANCE” AND TO CREATE A NEW SECTION 16-26.008 ENTITLED “ADMINISTRATIVE ZONING SETBACK VARIANCES FOR THE PRESERVATION OF TREES”; AND FOR OTHER PURPOSES.

WHEREAS, trees and their canopy have long been recognized as improving the livability, aesthetics, and land values in cities; and

WHEREAS, recent scientific studies have expanded the understanding of the benefits of urban forests. These studies have shown that urban forests provide ecosystem services that benefit all residents, such as mitigating air pollution, lowering ambient temperatures resulting in reduced energy use for cooling buildings, reducing stormwater runoff volumes and pollutants, reducing erosion and soil loss, and providing habitat to sustain populations of urban wildlife; and

WHEREAS, studies also show that living near urban trees provides numerous physical, mental, and social health benefits such as higher infant birth weights, lower adult and child obesity rates, lower levels of depression, increased attention, increased social cohesion, and reduced levels of domestic violence and other crimes; and

WHEREAS, the City of Atlanta’s (the “City’s) tree canopy is a well-recognized integral part of the City’s identity, and the City is frequently described as the “City in the Forest”; and

WHEREAS, the City is embarking on an effort to amend its Tree Protection Ordinance; and

WHEREAS, amendments to the Atlanta Zoning Ordinance will help ensure the effectiveness of the City’s current Tree Protection Ordinance or any future amendments to the Tree Protection Ordinance; and

WHEREAS, the City Charter, at Section 1-102(b), provides that the City shall have all powers necessary and proper to promote the safety, health, peace, and general welfare of the City and its inhabitants; and

WHEREAS, this ordinance is adopted pursuant to Georgia Constitution Article IX, Section II, Paragraph IV which empowers the governing authority of each county and of each municipality to adopt plans and exercise the power of zoning; and

WHEREAS, the Atlanta City Council finds this amendment to the affected zoning district regulations will serve the public health, safety, and general welfare of the community.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS
as follows:

Section 1: City Code Sec. 16-26.003, entitled “Conditions of granting a variance”, is hereby amended with deleted language in ~~strikethrough~~ and new language underlined:

(1) Findings Required: Except as permitted by the provisions of subsection (2) below, variances may be granted by the board only upon making all of the following findings:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;
- (b) The application of the Zoning Ordinance of the City of Atlanta to this particular piece of property would create an unnecessary hardship;
- (c) Such conditions are peculiar to the particular piece of property involved; and
- (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance of the City of Atlanta.

~~(2) Exceptions for Preservation of Mature Trees: Variances to reduce required setbacks may be granted for the sole purpose of preserving mature trees upon making the following findings:~~

~~(a) That the variance is necessary in order to preserve a mature tree (or trees) with a caliper diameter of eight (8) inches or more which would be lost if the setback requirements were strictly applied. Such a variance may only be granted if the city arborist certifies to the board of zoning adjustment in writing that such tree(s) will be lost either by necessary removal for construction or as a consequence of adjacent construction having an adverse impact on the survivability of the tree by virtue of damage to the root system of the tree(s) or similar dysfunction.~~

~~(b) Any variance granted under the provisions of this section shall include a condition that should the subject tree(s) die as a consequence, direct or indirect, of construction despite the granting of the variance, they shall be replaced, at the property owner's or applicant's expense, in accordance with a tree replacement plan prepared by the city arborist. The property owner or applicant shall be required to notify the city arborist of the death of the tree(s) within 30 days.~~

~~(c) Variances granted under the provisions of this section may be granted by the board only upon its finding that relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance of the City of Atlanta.~~

~~(d) Variances granted under these provisions are specifically exempt from the provisions of subsection (1)(a)-(c).~~

(3)(2) Prohibition Against Granting Use Variances; Exceptions: No variance may be granted for a use of land or building or structure that is prohibited by the Zoning Ordinance of the City of Atlanta. The board shall have no power to grant a use which is not otherwise permitted within the district regulations; except, however, the board of zoning adjustment may waive or modify the provisions of sections 16-11.006(1), 16-12.006(1), 16-13.006(1), 16-14.006(1), 16-16.006(1), and 16-17.006(1), "Transitional Uses," so as to permit drive-in facilities, service stations, mortuaries or funeral homes, or sales lot for automobiles to be located adjacent to residential districts. Such approval shall be granted in the form of a special exception in the manner provided by section 16-25.001(c), 16-25.002, and 16-25.005 of this part.

(4)(3) Limitations Against Granting Variances to the Sign Regulations: See section 16-28A.016.

(5)(4) Tree Preservation and Replacement: Any proposed variance shall be granted only upon a finding by the board of zoning adjustment that tree preservation and replacement plans are in accordance with the requirements of the City of Atlanta Tree Ordinance.

Section 2: That a new City Code Sec. 16-26.008, entitled “Administrative zoning setback variances for the preservation of trees”, is hereby added which shall read:

Sec. 16-26.008. - Administrative zoning setback variances for the preservation of trees.

The Department of City Planning, Office of Zoning & Development is authorized to approve administrative variances on single-family or two-family residential lots to reduce zoning setbacks by up to 80% of their width if recommended by the City Arborist to allow for the preservation of trees.

The City Arborist’s recommendation must find that the variance is necessary to preserve trees with a diameter at breast height of six (6) inches or more which would be lost if the setback requirements were strictly applied. Such a variance may only be granted if the City Arborist certifies to the Department of City Planning, Office of Zoning & Development in writing that such tree(s) will be lost either by necessary removal for construction or as a consequence of adjacent construction having an adverse impact on the survivability of the tree by virtue of damage to the root system of the tree(s) or similar dysfunction.

Section 3: That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby waived to the extent of the conflict.